



January 18, 2002

HOUSE BILL No. 1010

DIGEST OF HB 1010 (Updated January 15, 2002 6:15 PM - DI 105)

Citations Affected: IC 34-24; IC 35-42; IC 35-49; noncode.

Synopsis: Child pornography. Permits forfeiture of equipment used in preparing or disseminating child pornography or material harmful to minors. Prohibits making available to another person a computer containing material harmful to minors. Raises the penalty for child exploitation from a Class D felony to a Class C felony. Raises the penalty for possession of child pornography from a Class A misdemeanor to a Class D felony. Specifies that the laws concerning child exploitation, possession of child pornography, and obscenity and pornography apply to digitized images. Provides that a person who makes matter harmful to minors available through the Internet, a computer, or other display or dissemination may not be convicted of dissemination of matter harmful to minors unless: (1) the matter is obscene; (2) the matter is child pornography; or (3) the person distributes the matter believing or intending that the recipient is a child less than eighteen years of age.

Effective: July 1, 2002.

**Herrell, Dvorak, Alderman,
Bardon, Welch, Bischoff, Cook,
Adams T**

January 8, 2002, read first time and referred to Committee on Courts and Criminal Code.
January 17, 2002, amended, reported — Do Pass.

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January 18, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1010

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-24-1-1, AS AMENDED BY P.L.17-2001,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 1. (a) The following may be seized:

4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:

8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:

11 (i) Dealing in or manufacturing cocaine, a narcotic drug, or
12 methamphetamine (IC 35-48-4-1).

13 (ii) Dealing in a schedule I, II, or III controlled substance
14 (IC 35-48-4-2).

15 (iii) Dealing in a schedule IV controlled substance
16 (IC 35-48-4-3).

17 (iv) Dealing in a schedule V controlled substance

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- 1 (IC 35-48-4-4).
 2 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 3 (vi) Possession of cocaine, a narcotic drug, or
 4 methamphetamine (IC 35-48-4-6).
 5 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 6 (viii) Dealing in marijuana, hash oil, or hashish
 7 (IC 35-48-4-10).
 8 (B) Any stolen (IC 35-43-4-2) or converted property
 9 (IC 35-43-4-3) if the retail or repurchase value of that property
 10 is one hundred dollars (\$100) or more.
 11 (C) Any hazardous waste in violation of IC 13-30-6-6.
 12 (2) All money, negotiable instruments, securities, weapons,
 13 communications devices, or any property commonly used as
 14 consideration for a violation of IC 35-48-4 (other than items
 15 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
 16 before its repeal):
 17 (A) furnished or intended to be furnished by any person in
 18 exchange for an act that is in violation of a criminal statute;
 19 (B) used to facilitate any violation of a criminal statute; or
 20 (C) traceable as proceeds of the violation of a criminal statute.
 21 (3) Any portion of real or personal property purchased with
 22 money that is traceable as a proceed of a violation of a criminal
 23 statute.
 24 (4) A vehicle that is used by a person to:
 25 (A) commit, attempt to commit, or conspire to commit;
 26 (B) facilitate the commission of; or
 27 (C) escape from the commission of;
 28 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 29 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 30 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
 31 (5) Real property owned by a person who uses it to commit any of
 32 the following as a Class A felony, a Class B felony, or a Class C
 33 felony:
 34 (A) Dealing in or manufacturing cocaine, a narcotic drug, or
 35 methamphetamine (IC 35-48-4-1).
 36 (B) Dealing in a schedule I, II, or III controlled substance
 37 (IC 35-48-4-2).
 38 (C) Dealing in a schedule IV controlled substance
 39 (IC 35-48-4-3).
 40 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 41 (6) Equipment and recordings used by a person to commit fraud
 42 under IC 35-43-5-4(11).



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(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(c) (d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as

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a Class C felony.

SECTION 2. IC 35-42-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sado-masochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, ~~or~~ videotapes, **or creates a digitized image of** any performance or incident that includes sexual conduct by a child under eighteen (18) years of age; ~~or~~

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; **or**

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

~~commits child exploitation, a Class D Class C felony. However, the offense is a Class E felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)).~~

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape; ~~or~~

(8) a digitized image; or

(9) any pictorial representation;

that depicts or describes sexual conduct by a child who is less than

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1 sixteen (16) years of age or appears to be less than sixteen (16) years
 2 of age, and that lacks serious literary, artistic, political, or scientific
 3 value commits possession of child pornography, a ~~Class A~~
 4 ~~misdemeanor~~. **Class D felony.**

5 (d) Subsections (b) and (c) do not apply to a bona fide school,
 6 museum, or public library that qualifies for certain property tax
 7 exemptions under IC 6-1.1-10, or to an employee of such a school,
 8 museum, or public library acting within the scope of the employee's
 9 employment when the possession of the listed materials are for
 10 legitimate scientific or educational purposes.

11 SECTION 3. IC 35-49-1-3 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. "Matter" means:

- 13 (1) any book, magazine, newspaper, or other printed or written
 14 material;
- 15 (2) any picture, drawing, photograph, motion picture, **digitized**
 16 **image**, or other pictorial representation;
- 17 (3) any statue or other figure;
- 18 (4) any recording, transcription, or mechanical, chemical, or
 19 electrical reproduction; or
- 20 (5) any other articles, equipment, machines, or materials.

21 SECTION 4. IC 35-49-3-3 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a) Except as**
 23 **provided in subsection (b),** a person who knowingly or intentionally:

- 24 (1) disseminates matter to minors that is harmful to minors;
- 25 (2) displays matter that is harmful to minors in an area to which
 26 minors have visual, auditory, or physical access, unless each
 27 minor is accompanied by ~~his~~ **the minor's** parent or guardian;
- 28 (3) sells or displays for sale to any person matter that is harmful
 29 to minors within five hundred (500) feet of the nearest property
 30 line of a school or church;
- 31 (4) engages in or conducts a performance before minors that is
 32 harmful to minors;
- 33 (5) engages in or conducts a performance that is harmful to
 34 minors in an area to which minors have visual, auditory, or
 35 physical access, unless each minor is accompanied by ~~his~~ **the**
 36 **minor's** parent or guardian;
- 37 (6) misrepresents ~~his~~ **the minor's** age for the purpose of obtaining
 38 admission to an area from which minors are restricted because of
 39 the display of matter or a performance that is harmful to minors;
 40 or
- 41 (7) misrepresents that ~~he~~ **the person** is a parent or guardian of a
 42 minor for the purpose of obtaining admission of the minor to an



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1 area where minors are being restricted because of display of
2 matter or performance that is harmful to minors;
3 commits a Class D felony.

4 **(b) This section does not apply if a person disseminates,**
5 **displays, or makes available the matter described in subsection (a)**
6 **through the Internet, computer electronic transfer, or a computer**
7 **network unless:**

8 **(1) the matter is obscene under IC 35-49-2-1;**

9 **(2) the matter is child pornography under IC 35-42-4-4; or**

10 **(3) the person distributes the matter to a child less than**
11 **eighteen (18) years of age believing or intending that the**
12 **recipient is a child less than eighteen (18) years of age.**

13 SECTION 5. [EFFECTIVE JULY 1, 2002] (a) IC 35-42-4-4,
14 IC 35-49-1-3, and IC 35-49-3-3, all as amended by this act, apply
15 only to crimes committed after June 30, 2002.

16 (b) The seizure of an item under IC 34-24-1-1(a)(10), as
17 amended by this act, applies only to offenses committed under
18 IC 35-42-4-4, as amended by this act, after June 30, 2002.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1010, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 17 and 18, begin a new paragraph and insert:

"(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10)."

Page 3, line 18, strike "(c)" and insert "(d)".

Page 6, line 6, delete "knowing" and insert **"believing or intending"**.

and when so amended that said bill do pass.

(Reference is to HB 1010 as introduced.)

DVORAK, Chair

Committee Vote: yeas 12, nays 0.

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